

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte HANS RENTSCH

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Appeal No. 1998-0209  
Application No. 08/452,153<sup>1</sup>

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HEARD: November 4, 1999

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Before ABRAMS, STAAB and GONZALES, Administrative Patent Judges

GONZALES, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 4. Claims 6 through 12 have been allowed, and claim 5 has been indicated by the examiner as containing allowable subject matter.

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<sup>1</sup> Application for patent filed May 26, 1995.

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We AFFIRM.

Claim 1, which is illustrative of the subject matter at issue, reads as follows:

- a 1. A leak-proof all plastic male urinal bottle comprising a body leading to an open neck, said neck having a circumferential depression on an inside surface of the neck, a circular cap having a circumferential detent bead surrounding a cylindrical surface of said cap at a location where said depression and bead confront each other when said cap is in place, a diameter of said detent bead being greater than a diameter of said inside surface of said neck, said cap having a diaphragm-like disk with a reinforced area in the center thereof, said diaphragm distorting responsive to pressure on said reinforced area to form a somewhat conical shape which reduces the diameter of said detent bead sufficiently to slide through said inside surface of said neck far enough to confront said circumferential depressed area, the memory of said plastic causing said diaphragm to return to said disk shape for driving said detent bead into said circumferential depression responsive to removal of said pressure on said reinforced area.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Borse	3,716,871	Feb. 20,
1973		
Jones	5,422,076	Jun. 6,
1995		

(filed Oct. 29, 1993)

The following rejection is before us for review:

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Claims 1 through 4 stand rejected under 35 U.S.C. § 103 as being unpatentable over Borse in view of Jones.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the Answer mailed July 3, 1997 (Paper No. 11) for the examiner's complete reasoning in support of the rejection, and to the Brief filed June 3, 1997 (Paper No. 9) for the appellant's arguments thereagainst.

As a preliminary matter, we note that at page 5 of the Brief appellant has identified claims 1 through 4 as a single group and that the patentability of claims 3 and 4 have not been separately argued. Accordingly, we select claims 1 and 2 for review, and claims 3 and 4 shall stand or fall with the respective claim from which they depend. See 37 CFR § 1.192(c)(7).

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the

determination which follows.

We affirm the rejection of claims 1 and 2 under 35 U.S.C. § 103. Based upon appellant's grouping of the claims, supra, the rejection of claims 3 and 4 is also affirmed since these claims stand or fall with claims 1 and 2.

Turning to the evidence of obviousness, we find that the Borse reference is directed to a disposable, blow-molded, plastic urinal (col. 1, lines 3-7) having a snap-on closure.<sup>2</sup> The urinal [15] disclosed by Borse includes a body [16], a neck [17] extending from the upper part of the body and terminating in a mouth [18], a handle [19] and a cap [20] having a locking plate [21] lockable onto the handle [19] and a closure portion [22] (col. 2, lines 20-28). The cap [20] is molded of polyethylene of thin stock so as to be "readily flexible" (col. 3, lines 34). The closure portion [22] is described as "somewhat cup-shaped in cross-section" (id. at 61

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<sup>2</sup> Appellant refers to Borse's cap as a "cork" (Brief, page 7). Borse, however, specifically states that "[t]he closure portion is formed to facilitate snapping into sealed relation with the mouth of the neck" (col. 1, lines 41-43, emphasis added).

and 62) having a bottom wall [57], including a stiffening ridge [60] and a centrally located bottom [61], upstanding wall [58] and a lip [59]. Borse also discloses that

[a]n annular outwardly projecting sealing portion 62 is formed on the upstanding wall 58, having an outer diameter slightly larger than the inside diameter of the mouth 18 so that upon insertion of the closure member 22 into the mouth, a slight contraction of the closure member is experienced in order to obtain a tight sealing arrangement between the closure member and the mouth. When inserting the closure

portion into the mouth, a finger or thumb can be pressed against the bottom 61 to facilitate insertion. When removing the closure portion from the mouth, the lip 59 may be grasped to facilitate ease in removal. (Col. 3, line 67-col. 4, line 11)

Jones discloses a disposable, vacuum thermo-formed or injection molded, plastic<sup>3</sup> urine specimen bottle and cap (col. 2, lines 49-53) which is "particularly suited for collection of female urine specimens but readily adaptable for usage by males" (id. at 56-58) and which includes a cover that

is much simpler to manufacture and use than the threaded and snap-on caps disclosed in the prior art, facilitating use of the present invention by children or elderly adults. (Id. at 32-35)

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<sup>3</sup> The preferred material for the vessel [10] and cover [40] is plastic, e.g., polyethylene (col. 3, lines 47-52).

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As shown in Figures 1 and 2, the container [8] includes a vessel [10] and cover [40]. The vessel [10] has a generally flat, oval bottom [12] and a wall [14] extending substantially vertically upward therefrom. A lip [18] runs along and outwardly from the top edge of wall [14] to provide rigidity to vessel [10]. In order to provide a liquid tight seal for the contents of vessel [10], the inside surface of the vessel opening is provided with a circumferential recess or depression [54]. The cover [40], which

is approximately the size of the opening of the vessel, includes an annular ridge [52] which locks into mating recess [54] when the cover is lowered onto the opening of vessel [10].

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). Moreover, in

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evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

In applying the test for obviousness, this panel of the Board determines that it would have been obvious to one of ordinary skill in the art, from a collective assessment of the applied teachings, to replace the sealing portion [62] on the upstanding wall [58] of closure portion [22] of Borse with an annular ridge and to include a circumferential recess on the inside surface of the urinal opening of Borse such as disclosed by Jones. In our opinion, the incentive on the part of one

having ordinary skill in the art for making this modification would have been the desire to provide a cover and seal for the urinal disclosed by Borse which is waterproof, easier to manufacture and simpler to use than the conventional snap-on cap taught by Borse. See, the Jones patent, col. 2, lines 24-35.

The arguments advanced in the Brief relative to the

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obviousness rejection (pages 5 through 9) do not convince us that the examiner erred in rejecting claims 1 through 4 under 35 U.S.C. § 103.

Appellant argues that the Borse patent does not teach a bottle seal having the characteristics of appellant's seal, does not teach a locking bead and confronting recess, and does not deal with the problem of sealing a filled bottle when it is tipped over. Appellant also criticizes Jones as disclosing a "female urinal pan" (Brief, page 6). These arguments are not persuasive because nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. See In re Merck & Co., Inc., 800 F.2d 1091, 1097, 231 USPQ 375, 380. (Fed. Cir. 1986).

We note that Jones does provide a long, narrow structure which "allows for easier maneuvering and placement of the collection vessel for women" (col. 2, lines 3-7). However, as we have pointed out, supra, Jones also teaches that the collection vessel disclosed therein is "readily adaptable for



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usage by males." At any rate, even if Jones' vessel were designed exclusively for use by females, which it is not, we do not perceive this as a basis for reversing the rejection. Jones is applied for its teaching of a watertight seal which is simple to manufacture and easy to use, not for its teaching of a long, narrow structure.

Appellant also argues that the teachings of the Borse and Jones references cannot be combined, because Jones' seal depends on the flexibility of the vessel side wall to yield or spread apart as the cover engages the top of the vessel opening, whereas the neck of Borse's bottle is not deformable. We are not persuaded by this argument, because the proposed modification to the mouth of Borse would have produced an operable seal even with Borse's inflexible mouth. This is because the necessary

flexibility would have been provided by the flexible plastic

cap taught by Borse.<sup>4</sup>

Appellant further argues that the cited references are not combinable because they lack the requisite motivation or suggestion to combine them. We do not share this view. As articulated, supra, we determine that the evidence of obviousness would have certainly provided ample incentive or motivation to one of ordinary skill in the art for combining the applied references.

Finally, appellant argues that neither reference teaches nor suggests the "tapered guide section" called for in claim 2. However, as explained by the examiner (Answer, page 5), Jones teaches a "tapered guide section" formed between the bottom of the cover and the midpoint of the annular ridge.

Accordingly, appellant's argument that the specific limitation of claim 2 is not taught or suggested by the prior art is not persuasive.

In summary, this panel of the Board has affirmed the rejection of appellant's claims 1 through 4 under 35 U.S.C.

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<sup>4</sup> As pointed out, supra, Borse teaches that the plastic cap is "readily flexible" which allows the cap to contract when it is inserted into the mouth of the container.

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§ 103.

The decision of the examiner is affirmed.

No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a).

AFFIRMED

NEAL E. ABRAMS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
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	)	
JOHN F. GONZALES	)	
Administrative Patent Judge	)	

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